Community General Hospital of Sullivan County *and* Local 1199, Drug, Hospital and Health Care Employees Union, RWDSU, AFL–CIO. Case 3–CA–15715

June 13, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS CRACRAFT AND OVIATT

On February 8, 1991, Administrative Law Judge Raymond P. Green issued the attached decision. The Petitioner filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

[1] The judge erroneously referred to the date of the parties' final bargaining session as May 10, 1990. The correct date is May 16, 1990.

The Charging Party excepts to the judge's finding that the parties' bargaining was at an impasse on May 16, 1990, on the ground that no lawful impasse could have occurred in view of the Charging Party's outstanding request for information concerning the the Respondent's pension plan. We agree with the judge's finding that the parties were at impasse as of their final bargaining session on May 16, and therefore the Respondent's implementation on May 31 of certain terms of its last contract proposal was not unlawful. The record shows that the Charging Party's information request was not forwarded to the Respondent until May 18, 2 days after the impasse had been reached. As noted by the judge, there is no allegation that the Respondent unlawfully refused to furnish the requested information. Further, there is no evidence, and the Charging Party does not contend, that the furnishing of the requested information would have broken the deadlock in the negotiations.

Alfred M. Norek Esq., for the General Counsel.
Sheldon Rosenberg, Esq. (Rosenberg & Ufberg), for the Respondent.

DECISION

STATEMENT OF THE CASE

RAYMOND P. GREEN, Administrative Law Judge. This case was tried in Albany, New York, on November 13 and 14, 1990. The charge was filed on June 20, 1990, and the complaint was issued on August 2, 1990. In substance the complaint alleged that during collective-bargaining negotiations, the Respondent on May 31, 1990, unilaterally raised the wage rates of certain employees and unilaterally reduced contributions to a pension fund. The key issue in this case is whether on May 31, 1990, there existed an impasse in negotiations, justifying the Employer's implementation of certain aspects of its offer to the Union.

FINDINGS OF FACT

I. JURISDICTION

The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. The Respondent also admits and I find that the Union is a labor organizations within the meaning of Section 2(5) of the Act.

II. OPERATIVE FACTS

The Respondent and the Union have had a collective-bargaining relationship covering many of the hospital's employees for many years. In this respect, there have been four separate bargaining units represented by the Union.

At one time in the 1970s the hospital had bargained with the Union through the League of Voluntary Hospitals. However, the Respondent withdrew from the League and negotiated separate contracts thereafter. The last collective-bargaining agreement between the parties was executed on January 16, 1985. It was retroactive to October 1, 1983, and its term ended on September 30, 1985. It appears that although no new contract was executed, the terms of the foregoing contract was extended through 1986 and 1987. It also appears that the bargaining which took place in 1987 reached an impasse in September 1987, whereupon the employer implemented its final offer.

Whereas at one time the Respondent had contributed moneyes on behalf of the unit employees to a pension fund jointly administered by the Union, the last contract did not provide for such contributions as the Union had consented back in 1980 to the Company's withdrawal from that fund. As a consequence, the Company established its own pension plan. Also, during the period after 1985 when the parties operated without an executed contract, the Company ceased deducting union dues pursuant to the expired contract's dues-checkoff provision. Finally, it is noted that in 1989 as a result of the Employer's inability to make contributions to the Union's National Benefit Fund (which provided health benefits), the hospital was ultimately expelled from that fund in or about June 1989. Thereafter, the Respondent established its own health care plan on a self insured basis.[1]

Negotiations for a new contract opened on September 19, 1989. As testified to by the Union's chief negotiator Eustace Jarrett, the Union's principal goals were; (1) to get the company back into the Union's National Benefit Fund, (2) to get the company back into the Union's Pension Fund, (3) to resume the dues-checkoff procedure, and (4) to obtain wage increases. At the first negotiation session Jarrett spent about 35 minutes making a speech in front of the assembled people as to how bad the hospital was to its employees. After Rosenberg, the chief negotiator on behalf of the hospital stated that he was there to negotiate, the Respondent's negotiating team walked out.

It is noted that there were 13 bargaining sessions held over a 9-month period from September 19, 1989, to May 10, 1989. Moreover, it is clear that from February 8, 1990, the

[1] In January 1990, the Respondent entered into an informal settlement agreement in Cases 3–CA–14850 and 3–CA–15127. In substance, the Respondent agreed (without admitting guilt), that it would not unilaterally change health insurance carriers and coverage without notification to or bargaining with the Union.

Employer stood pat on the contract offer it made on that date. It also is clear that whatever the subjective intent of its representatives, the Union's expressed position regarding its demands were frozen after March 8, 1990. That is, there was simply no movement by either party in relation to their respective demands between March 8, 1990, and the final bargaining session held on May 10, 1990. At virtually every meeting the Employer rejected the Union's demands that the Employer rejoin the Union's Pension and National Benefit Funds. Also, the Employer rejected the Union's demand for a resumption of dues checkoff.

The first detailed set of demands submitted by the Union were made in conjunction with a meeting held on October 19, 1989. These included inter alia: retention of the dues-checkoff provision; wage increases of 15 percent and 10 percent respectively on October 1, 1989, and October 1, 1990; and provisions requiring the Employer to rejoin the Union's National Benefit Plan and its Pension Plan.

On October 19, 1989, the hospital forwarded a set of its own proposals to the Union. These, in effect, rejected the Union's proposals described above. The Respondent also proposed retention of its own medical plan and wage increases of 3-1/2 percent and 4-1/2 percent on October 1, 1989 and October 1, 1990, respectively.[2]

In December 1989, the Union revised its proposals to some degree. Although somewhat simplified in format, the economic demands remained essentially the same.

On December 21, 1989, the hospital submitted a contract offer which offered, inter alia, a 5-percent wage increase effective on ratification and a 3-percent reduction in the amount of money to the Employer's Pension Plan. (At this time, the Union's Pension Fund was overfunded and therefore it was agreed between the Union and other contracting hospitals that all payments to that fund were to be suspended for 3 years.) The hospital's offer specifically included retention of its own Pension and Health Plans. It also rejected a dues-checkoff clause.

On January 3, 1990, the Employer wrote to the Union setting forth dates that it was able to meet in January. The letter stated among other things that the Employer's December 21, 1989 offer was not final and that it was willing to make further concessions if the Union made new offers and counter offers. Jarrett responded that the Union was willing to meet on January 16 and 17. Jarrett also stated that the Union viewed the Employer's proposals as being regressive.

On January 16, 1990, the Union submitted a new set of proposals. These reduced the wage increases demanded to 9 percent in the first year and 7 percent in the second year of a contract. As always, these demands proposed that a new contract contain a dues-checkoff clause and that the Employer rejoin the Union's Benefit Plan. By its terms the proposal did not include the demand that the Employer rejoin the Union's Pension Plan. This however, was an oversight and the Union did not intend to drop this demand which was conveyed subsequently.

On February 8, 1990, the Company made the contract offer from which it did not thereafter deviate. This proposed general wage increases of 3 percent and 3-1/2 percent, respectively on December 1, 1989, and April 1, 1990.[3] It also proposed that effective April 1, 1990, it would pay 4 percent of total base pay to the Hospital's Pension Fund and that it would pay a total of 6-1/2 percent of base pay to that Fund effective on February 1, 1993. (This, as noted above, was a proposal to reduce the amount of money then being paid to the Hospital's Pension Fund.) As before, the Hospital rejected the Union's dues checkoff demand and the demand that the Hospital rejoin the Union's National Benefit Fund.

At a meeting on March 8, 1990, the Union through a Federal mediator, Patrick Hart, submitted a new set of contract proposals. In addition to the previously described general wage increases (9 percent and 7 percent), the Union proposed that various classifications of clerical, technical, professional, service, and maintenance workers be given hourly wage increases on September 30, 1989, 1990, and 1991 from which the general wage increases would then be calculated. When these demands were transmitted to the company negotiators they responded that the Union's demands were going backwards. The meeting then ended.

On March 19, 1990, members of the Union's negotiating committee sent a letter to Hospital's board of trustees essentially complaining that the law firm representing the Company were union busters and that a ''settlement seems unreachable as long as Rosenberg is the chief negotiator.''

Three more meetings were held with the aid of the Federal mediator but no movement was made by either side from their respective proposals. At one point, the Union told the mediator that it felt that the Company did not fully understand the Union's Pension Plan proposal and asked that the Company be reminded that the proposal was, in effect, that payments to the Plan were not required for most of the contract's term. In this connection, the Company was cognizant of the Union's proposal and rejected it, preferring to retain its own Pension Plan.

The final meeting between the parties was held on May 10, 1990, and produced no new proposals or offers by either side. The Company asserts that at this (and at the penultimate meeting), it told the mediator to notify the Union that the Company's offer of February 8 was its final offer. The Union asserts that it never received the message that this was the Company's final offer. (Needless to say the mediator did not testify.)

On May 31, 1990, the Company implemented the wage and pension proposals it had made to the Union.

As of May 31, 1990, the only pending matters between the Union and the Company were their respective requests for certain information. In this respect the Company had made a request for certain information regarding the Union's National Benefit Fund and the Union had made a request for certain information regarding the Employer's Pension Plan.

Between June 1 and July 19, 1990, the parties exchanged letters which, in the main, dealt with their information requests. (There is no allegation that either side unlawfully refused to furnish relevant information.) More significantly is the fact that neither the Union, the Company nor the mediator suggested that the parties get together for more bargaining. In fact, there has been no further bargaining since the last meeting which was held on May 10, 1990.

[2] The hospital asserts that its financial position was precarious at all relevant times. In this regard, it asserts that it pleaded inability to pay and offered to open its books and records to the Union. The Union did not take the Employer up on its offer.

[3] In addition to the general wage increases, the Company proposed that certain categories of employees be raised to specific hourly wage rates on various dates during the contract's term.

Analysis

Where the parties are at impasse in their negotiations, the employer may implement some or all of its contract proposals. *Colorado-Ute Electrical Assn.*, 295 NLRB 607 (1989). In *Sacramento Union*, 291 NLRB 552 (1988), the Board held that a breakdown in the entire negotiations may result from an impasse on a singe critical issue and thereby free an employer to implement its last offer. As it is my opinion that the parties reached impasse by May 10, 1990, on a number of critical bargaining issues, I conclude that the Respondent was free to implement its contract offer regarding wage increases and pension reductions.[4]

In *Taft Broadcasting Co.*, 163 NLRB 475, 478 (1967), affd. 395 F.2d 622 (D.C. 1968), the Board stated:

> Whether a bargaining impasse exists is a matter of judgement. The bargaining history, the good faith of the parties in negotiations, the length of the negotiations, the importance of the issue or issues as to which there is disagreement, the contemporaneous understanding of the parties as to the state of negotiations are all relevant factors to be considered in deciding whether an impasse in bargaining existed.

Whether or not the Union was notified on May 10, 1990, that the Employer was making a ''final offer'' is not determinative in the present case. It is clear to me that the Union placed great priority on getting the Employer to resume dues checkoff, and to re-enter the Union's Pension and Welfare Plans. The Union, at every negotiation session tried to convince the Company as to the merits of its proposals and the Respondent, at every opportunity, refused to accept the Union's demands on these issues. On February 8, 1990, the Company made a comprehensive contract offer from which it never thereafter deviated. Similarly, the Union on March 8, made a comprehensive offer from which it did not deviate. These respective offers, made 5 and 6 months after the commencement of negotiations, included wage and salary proposals from which neither side offered thereafter to compromise. Moreover, after the final session held on May 10, 1990, neither party suggested or offered to meet for further negotiations.

The Union asserts that it was willing to continue to bargain and that it did not believe that an impasse had been reached. However, it seems to me that the parties had reached a deadlock by at least May 10, 1990 (8 months after the commencement of bargaining), and that neither party objectively manifested any indication that they were ready to compromise their respective positions. Nor have they objectively manifested such an intention at any time thereafter. While bargaining must be conducted in good faith, it need not continue in perpetuity. Nor may one side insist on negotiating for an indefinite period of time simply because it subjectively believes that an agreement at some indeterminate future date is possible. In short, I conclude that the parties in this case had reached an impasse on May 10, thereby permitting the Employer to implement the changes on May 31, 1990. *Huck Mfg. Co. v. NLRB*, 693 F.2d 1176, 1186 (5th Cir. 1982).

Conclusion of Law

The Respondent has not violated the Act in any manner encompassed by the charge and complaint.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[5]

ORDER

The complaint is dismissed.

[4] In my view the facts in the present case are significantly different from those in *Harrah's Marina Hotel & Casino*, 296 NLRB 1116 (1989), which is cited by the General Counsel in support of his assertion that no impasse was reached.

[5] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.